

**Cour
Pénale
Internationale**

**International
Criminal
Court**



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No.: ICC-01/14-01/18
Date: 15 November 2019

PRE-TRIAL CHAMBER II

Before: Judge Antoine Kesia-Mbe Mindua, Presiding Judge
Judge Tomoko Akane
Judge Rosario Salvatore Aitala

SITUATION IN THE CENTRAL AFRICAN REPUBLIC II

**IN THE CASE OF
*THE PROSECUTOR v. ALFRED YEKATOM AND
PATRICE-ÉDOUARD NGAÏSSONA***

Public Document

**Common Legal Representatives' Joint Response
to the "Yekatom Defence Request for Public Delivery of Confirmation Decision"**

Source: Common Legal Representatives of Victims

Document to be notified in accordance with regulation 31 of the *Regulations of the Court* to:

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I. INTRODUCTION

1. The Common Legal Representative of the Former Child Soldiers and the Common Legal Representatives of the Victims of Other Crimes (jointly the “Common Legal Representatives”) hereby present their joint response to the “Yekatom Defence Request for Public Delivery of Confirmation Decision” dated 11 November 2019 and notified on 12 November 2019 (the “Defence’s Request”).¹

2. As a matter of principle, the Common Legal Representatives support the Defence’s Request in relation to the simultaneous delivery of the confidential and public redacted versions of the confirmation decision as it pertains to the publicity of the proceedings, a principle of a particular importance in a Court where victims’ participation is a key feature and allowing the communities affected by the crimes to be informed in a proper and timely manner.

II. PROCEDURAL BACKGROUND

3. From 19 to 25 September and on 11 October 2019, Pre-Trial Chamber II (the “Chamber”) held the confirmation of charges hearing.

4. On 11 October 2019, the Chamber stated that the decision on the confirmation of charges against Mr Alfred Yekatom and Mr Patrice-Edouard Ngaïssona will be delivered within 60 days from the end of the hearing in compliance with regulation 53 of the Regulations of the Court.²

¹ See the “Yekatom Defence Request for Public Delivery of Confirmation Decision”, No. [ICC-01/14-01/18-394](#), dated 11 November 2019 and notified on 12 November 2019 (the “Defence’s Request”).

² See the transcript of the hearing held on 11 October 2019, No. ICC-01/14-01/18-T-011-CONF-ENG ET, page 86, lines 9-11.

5. On 11 November 2019, the Defence for Mr. Yekatom filed its Request³ asking the Chamber to “*issue a simultaneous public redacted version of its confirmation decision as well as hold a public hearing for the delivery of a summary of its decision on the confirmation of charges*”.⁴

6. On 14 November 2019, the Prosecution submitted its response to the Defence’s Request.⁵

III. SUBMISSIONS

7. The publicity of the proceedings is a key component of fair trial guarantees.⁶ In the specific context of the Court, the “fair trial” guarantees must apply throughout the proceedings and in respect of all parties and participants, including victims.⁷

³ See the Defence’s Request, *supra* note 1.

⁴ *Idem*, para. 1.

⁵ See the “Prosecution’s Response to the Yekatom Defence Request for Public Delivery of Confirmation Decision (ICC-01/14-01/18-394)”, No. [ICC-01/14-01/18-395](#), 14 November 2019 (the “Prosecution’s Response”).

⁶ See, for example, the “Decision on Mr Gbagbo’s Request for lifting of redactions and reclassification of documents in the record (confidential filing no. 1173) and related orders” (Trial Chamber I), No. [ICC-02/11-01/15-1194](#), 5 July 2018, para. 7: “*Since the early stages of this trial, the Chamber has held that the paramount principles of the publicity and transparency of the proceedings require that any restriction to those principles must be viewed as an exception and therefore strictly limited to what is necessary to safeguard other interests also protected under the Statute*”. See also the “Decision on the Prosecutor’s application for protective measures for Witness P-0428”, No. [ICC-02/11-01/15-1155-Red](#), (Pre-Trial Chamber I), 20 April 2018, para. 6: “*Articles 64(7) and 67(1) of the Statute set forth the paramount principle of the publicity of the proceedings as a fundamental tenet of a fair trial. Accordingly, it is only under limited and specific circumstances that a Chamber may exceptionally restrict the scope of application of the principle: in particular, in light of the need to ensure the protection of victims, witnesses and innocent third parties pursuant to article 68(1) of the Statute. This may result in the Court adopting protecting measures in the form of redactions, to the extent that these measures are not prejudicial to or inconsistent with the rights of the accused, pursuant to rule 87 of the Rules*”; and the “Decision on Victims’ Application for Protective and Special Measures” (Trial Chamber IX), No. [ICC-02/04-01/15-1227](#), 13 April 2018, para. 6: “*The Single Judge repeats that the publicity of proceedings is a fundamental right of the accused and a necessary component of a fair and transparent trial*”.

⁷ In this regard, the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the UN General Assembly on 29 November 1985 calls for enabling victims’ access to Justice and to obtain redress as well as for providing them with fair treatment in this regard. See the Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power adopted by the UN General Assembly on its 96th plenary meeting, [UN Doc. A/RES/40/34](#), 29 November 1985, Principles 4 to 7.

8. The Common Legal Representatives underline that *“the personal interests of victims are affected by the outcome of the pre-trial stage of the case insofar as this is an essential stage of the proceedings which aims to determine whether there is sufficient evidence providing substantial grounds to believe that the suspect is responsible for the crimes with which he has been charged by the Prosecution”*.⁸

9. Given the importance of the confirmation of charges decision in the proceedings and its impact on the participating victims, on the affected communities and on the public in general, the Common Legal Representatives submit that the confidential and public redacted versions of the decision should be issued simultaneously so as to ensure the publicity of the proceedings and to guarantee their transparency and accessibility. In this regard, the Common Legal Representatives note that the Chamber is in a position of rendering both versions of the decision without previous consultation with the parties and participants.⁹

10. Furthermore, the public delivery of decisions also *“protects litigants against the administration of justice in secret with no public scrutiny”*.¹⁰

11. The Common Legal Representatives posit that if the Chamber were not inclined to issue a public redacted version of its decision simultaneously with the confidential one, as an alternative, at least a summary of the ruling should be provided publicly detailing the underlying reasons and *rationale* of the Chamber. This will also increase acceptance since *“popular opinion is increasingly sceptical of those*

⁸ See the “Decision on the 34 Applications for Participation at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. [ICC-02/05-02/09-121](#), 29 September 2009, para. 4. See also, the “Decision on the Set of Procedural Rights Attached to Procedural Status of Victim at the Pre-Trial Stage of the Case” (Pre-Trial Chamber I, Single Judge), No. [ICC-01/04-01/07-474](#), 13 May 2008, para. 45; the “Decision on the Prosecution, OPCD and OPCV Requests for Leave to Appeal the Decision on the Applications for Participation of Victims in the Proceedings in the Situation” (Pre-Trial Chamber I, Single Judge), No. [ICC-01/04-444](#), 6 February 2008, pp. 8 and 10; and the “Decision on the Requests for Leave to Appeal the Decision on the Application for Participation of Victims in the Proceedings in the Situation” (Pre-Trial Chamber I, Single Judge), No. [ICC-02/05-121](#), 6 February 2008, p. 6.

⁹ See the Prosecution’s Response, *supra* note 5, para. 2.

¹⁰ See ECtHR, Application [Fazliyski v. Bulgaria](#), No. 40908/05, 16 July 2013, para. 64.

who have and exercise authority. [...] The public wants to know what values, opinions, and attitudes judges bring to bear on the task of deciding cases”.¹¹ In that regard, the Common Legal Representatives concur with the Defence’s assertion that *“a delivery of the decision in court will serve to better inform the public and particularly the citizens of the Central African Republic [...]”*.¹²

12. The Common Legal Representatives further note that in the *Al Hassan* case, Pre-Trial Chamber I delivered its confidential decision on 30 September 2019 and made its public redacted version available only on 13 November 2019,¹³ nearly one month and half after the issuance of the ruling. They posit that any delay in the issuance of a public redacted version of the confirmation of charges decision not only conduces to potential speculations that could affect the trust in the Court’s work from the public and the international community, but could also enable disinformation which would, in turn, lead to confusion, misunderstanding and create harmful expectations from the affected communities and from the victims in particular. In this regard, the Common Legal Representatives note that - in contrast to the *Al Hassan* case - in previous proceedings, in particular in the *Gbagbo* and in the *Ongwen* cases,¹⁴ a public redacted version of the confirmation decision was issued simultaneously with the confidential version. They submit that no reason exists to depart from this constant practice.

13. Finally, in relation to the delivery of the decision in open court, the Common Legal Representatives note that delivery of such an important decision by means of audio-visual broadcast has the potential to reach a wider audience than its written

¹¹ See SHARPE (R.), *Good Judgement: Making Judicial Decisions*, University of Toronto Press, Scholarly Publishing Division, 2018, p. 135.

¹² See the Defence’s Request, *supra* note 1, para. 1.

¹³ See the “Rectificatif à la Décision relative à la confirmation des charges portées contre Al Hassan Ag Abdoul Aziz Ag Mohamed Ag Mahmoud” (Pre-Trial Chamber I), No. [ICC-01/12-01/18-461-Corr-Red](#), 13 November 2019.

¹⁴ See the “Decision on the confirmation of charges against Dominic Ongwen”, (Pre-Trial Chamber II), No. [ICC-02/04-01/15-422-Red](#), 23 March 2016; See also the “Decision on the confirmation of charges against Laurent Gbagbo” (Pre-Trial Chamber I), No. [ICC-02/11-01/11-656-Red](#), 12 June 2014.

format, which would effectively contribute to increase the publicity of the ongoing proceedings. However, they leave it to the discretion of the Chamber.

Respectfully submitted.



Dmytro Suprun
Common Legal Representative of the
Former Child Soldiers



Paolina Massidda
For the team of the Common Legal
Representatives of the Victims of other
crimes

Dated this 15th day of November 2019

At The Hague, The Netherlands